

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

AL MAYNARD POTTER,
Petitioner,

v. 4:12-cv-155

WARDEN CEDRICK TAYLOR,
Respondent.

ORDER

Before the Court is Al Maynard Potter's motion to alter or amend judgment and motion for reconsideration. ECF No. 17. For the reasons set forth herein, Potter's motion is **GRANTED**.

Federal Rule of Civil Procedure 60(b) provides that "the court may relieve a party or its legal representative from a final judgment [or] order . . . for . . . mistake [or] . . . any other reason that justifies relief." This rule "encompasses mistakes in the application of the law." *Parks v. U.S. Life and Credit Corp.*, 677 F.2d 838, 840 (11th Cir. 1982).

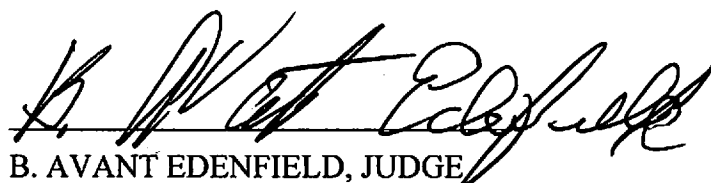
Potter is serving a life sentence for a 1999 murder conviction. See ECF No. 1. Potter appealed his conviction, and on January 8, 2001, after remand for an evidentiary hearing, the Supreme Court of Georgia affirmed Potter's conviction. *Potter v. State*, 273 Ga. 325 (2001). Potter did not seek certiorari in the Supreme Court of the United States. His one-year time limit to file a 28 U.S.C. § 2254 petition, therefore, began to run on April 9, 2001. After 238 days, his time was tolled when he filed his state habeas petition on December 3, 2001. See ECF Nos. 1 at 3; 10 at 2; 16; 17. That petition was denied on February 8, 2011. *Id.* The Supreme Court of

Georgia denied his certificate of probable cause to appeal that denial on January 23, 2012. *Id.* His one-year time limit, therefore, began to run again on January 24, 2012.¹ At that point, Potter had 127 days left before his one-year time limit would expire on May 29, 2012. Potter timely filed his § 2254 petition on May 29, 2012. ECF No. 1.

The Magistrate Judge, however, recommended that Potter's § 2254 petition be dismissed as untimely. ECF No. 10. This Court adopted the Magistrate Judge's Report and Recommendation, dismissing Potter's § 2254 petition as untimely. ECF No. 14. The Court erred. Thereafter, Potter initially filed a motion for certificate of appealability, ECF No. 16, but he has since withdrawn that motion, ECF No. 18, and instead moves the Court to reconsider its dismissal of his § 2254 petition. ECF No. 17.

Because the Court made a mistake in applying the law when it dismissed his § 2254 petition as untimely, Potter's motion for reconsideration, ECF No. 17, is **GRANTED**. The Adoption Order and Judgment dismissing this case, ECF Nos. 14; 15, are **SET ASIDE**. The Clerk is directed to **RE-OPEN** this case.

This 23 day of April, 2013



B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

¹ Respondent does not dispute any of these dates.